HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dhirendra Mishra, J. J.

CRIMINAL APPEAL NO.112 of 1999

Appellant : Prem Lal
S/o Mindhu Ram Mochi
Aged about 25 years
R/o Kholiyapuri
PS Pulgaon
Dist-Durg (CG)

Vs

Respondent : State of Chhattisgarh
Through
PS : Rajnandgaon
Chhattisgarh

PRESENT:

Smt Kiran Jain, counsel for the appellant.
Shri CR Sahu, Panel lawyer for the State.

J U D G M E N T

(Delivered on 4th May 2006)

Per Hon'ble Shri Dhirendra Mishra, J.

The appellant has preferred this Criminal Appeal under Section 374(2) of the Cr.P.C. as he has been convicted by learned Additional Sessions Judge, Rajnandgaon in Sessions Trial No.167/97 vide his judgment dated 09.11.1988 under Sections 394 and 302 of the IPC and sentenced to undergo rigorous imprisonment for five

years and to pay a fine of Rs.500/- under Section 394, life imprisonment and fine of Rs.500/- under Section 302, and in default of payment of fine amount to further undergo simple imprisonment of two months on each count.

2) Case of the prosecution, in brief is that on 10.05.1995 at about 8 am, deceased Gayatribai went to collect karan seeds in the field and when she did not return for taking her meal, her husband Subhavu went to search her. At about 4 pm, he found the dead body of Gayatribai lying in the field. The matter was reported by Rajkumar in the Police station, Rajnandgaon whereupon merg intimation was registered on the same day at 7 .30 pm. Sub-Inspector Jagdish Singh Rajput proceeded for the scene of occurrence, conducted inquest over dead body of the deceased vide Ex.P/2 after due notice to the witnesses vide Ex.P/3. The dead body was sent for autopsy to the District Hospital, Rajnandgaon. Dr Harish Kumar Joshi, Assistant Surgeon conducted postmortem and submitted his report vide Ex.P/15. On the report of Jagdish Singh Rajput, crime No. 285/95, dated 10.05.1995 under Section 302 and 394 of Cr.P.C. was registered against unknown persons at about 23.15 hours. Site plan of the place of occurrence was prepared by Jagdish Singh Rajput vide Ex.P/10. After two years of the incident, on the basis of memorandum of the accused under Section 27 of the Evidence Act dated 17.05.1997, a silver plate weighing 238 gms, a golden nose ring and Sarafa register

for the year 1995 -96 in the name of Sunil Sahu, were recovered vide Ex.P/9. After completing the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Rajnandgaon, who in turn committed the case to the Court of Sessions, Rajnandgaon and the same was received on transfer by learned Additional Sessions Judge for trial.

3) Charges under Sections 394 and 302 of the IPC were framed against the appellant who abjured his guilt. The prosecution in order to establish charges against the appellant examined 14 witnesses in all. Thereafter, statement of accused under Section 313 of the Cr.P.C. was recorded in which he denied the circumstances appearing against him in the prosecution case and stated that he has been falsely implicated in the case and was seriously beaten by the police during interrogation.

4) Homicidal death of Gayatribai is not in dispute. Even otherwise, from perusal of the postmortem report vide Ex.P/15 submitted by Dr. Harish Kumar Joshi (PW-9), who conducted postmortem on the body of Gayatribai and found 11 external injuries and opined that cause of the death of the deceased was Asphyxia due to throttling, homicidal death of Gayatribai is established.

5) There is no eyewitness to the incident. Conviction of the appellant is based on recovery of the looted articles on the memorandum of the accused from the shop of Tarachand (PW-4).

6) Learned counsel for the appellant submits that the appellant was arrested after two years of the incident on the basis of alleged memorandum by which 238 gms of silver plate and a nose ring weighing 100 mg is alleged to have been recovered from Tarachand (PW-4). However, in the FIR which was recorded on the same day, the description of the alleged articles is given as one pair of silver anklets weighing 20 tolas, 4 numbers of silver bangles weighing 6-7 tolas and one golden nose ring weighing 3 masas (2.5 gms). The appellant is connected with the crime on the basis of sarafa register vide Ex.P/7A seized from Tarachand in which the entry dated 19.05.1995 mentions that Sunil s/o Sindhu Sahu of Anda, Durg has sold one pair of silver "athi", six silver bangles weighing 240 gms and a golden nose ring weighing 100mg, total for a value of Rs.1336/-. The description of articles sold by Sunil on 19.05.1995 does not match with the description of the alleged articles mentioned in the FIR. It is further argued that articles of the deceased were put for identification by the Executive Magistrate before husband of the deceased. He identified the nose ring, but it was not possible to identify the silver articles as the same were admittedly melted. Even then, in the identification memo (Ex.P/5), both the articles were correctly identified by him.

7) On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

8) We have heard learned counsel for the respective parties.

9) The appellant has been convicted solely on the basis of the seizure of the alleged articles at the instance of the appellant on his memorandum. The only question to be considered for disposal of this appeal is whether the accused can be convicted only on the basis of recovery of alleged articles which were seized from the shop of Tarachand, after two years of the incident.

10) Learned trial Court only on surmises and conjunctures held the appellant guilty for committing offence of murder of deceased Gayatribai.

11) We have scrutinised the sarafa register vide Ex.P/7A, FIR vide Ex.P/14 and the seizure memo vide Ex.P/9.

12) We are of the considered opinion that regarding nose ring which is allegedly seized at the instance of the appellant from Tarachand, the prosecution has not been able to establish that the nose ring seized from Tarachand P.W.4 is the same ring which belongs to the deceased; as the description of the nose ring in the FIR was shown to be 3 masa (2.5 gms), whereas in the Sarafa register of Tarachand the weight of nose ring has been shown as 100 mg. Even other wise, we are of the considered opinion that the entry dated 19.05.95 initially referred to only silver ornaments weighing 240 gms as described above and nose ring one number weighing 100 mg. are shown to be sold on 19.05.95 and thus there is discrepancy in the

description of the articles seized and articles which were allegedly looted from the deceased on the date of incident. It is not in dispute that except the recovery of nose ring at the instance of the appellant on his memorandum, there is no other evidence on record to connect the accused with crime. Therefore, in view of the fact that the recovery was made after two years and there was a discrepancy in the weight of the nose ring, we are of the considered opinion that the court below was not justified in holding the appellant guilty for causing homicidal death of deceased and benefit of doubt was to be extended to the appellant.

13) In the result, the appeal succeeds and the same is allowed. Impugned judgment of the trial Court convicting and sentencing the appellant as mentioned above is set aside. The appellant is acquitted of the charges leveled against him and he is directed to be set at liberty forthwith, if not required to be detained in any other case.

Sd/-
V.K. Shrivastava
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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